

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

AMEREN TRANSMISSION COMPANY OF	)	
ILLINOIS	)	
	)	Docket No. 14-0551
Petition for an Order Pursuant to Section 8-509 of	)	
the Public Utilities Act Authorizing Use of Eminent	)	
Domain Power.	)	

**INITIAL BRIEF OF AMEREN TRANSMISSION COMPANY OF ILLINOIS**

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## **I. INTRODUCTION**

In Docket 12-0598, the Illinois Commerce Commission authorized Ameren Transmission Company of Illinois (ATXI) to construct, operate, and maintain a new 345 kilovolt (kV) electric transmission line across central Illinois. This project is known as the Illinois Rivers Project.

*Ameren Transmission Co. of Ill.*, Docket 12-0598, Order at 133-35 (Aug. 20, 2013); *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 82-84 (Feb. 20, 2014). The Commission found the Project would promote the development of competitive electric markets and was necessary to provide adequate, reliable, and efficient electric service to Ameren Illinois area customers. Of particular relevance to this proceeding, the Commission found reliability needs in the Decatur, Illinois area can be met in a timely manner (by 2016) through use of a Pana, Illinois to Mt. Zion, Illinois 345 kV transmission line connection; and that the need to resolve these reliability concerns for the Decatur area by 2016 meant that the Project must not be delayed. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 16 (Feb. 20, 2014). To make the Pana connection, the Commission approved a defined route, one proposed by the Leon Corzine/Assumption Group intervenors, from Pana generally north towards Mt. Zion along Illinois Highway 51. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Order at 134; *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh'g at 84.

To construct the Pana to Mt. Zion segment by 2016, ATXI needs easements on the real property that the segment traverses. Thus, for over six months, ATXI has negotiated with landowners to acquire the easement rights it needs to construct, and then operate and maintain, the Pana to Mt. Zion segment of the Project. In many cases, those negotiations were successful, and ATXI acquired the easements it needs.

In some cases, however, good faith negotiations have not been successful. And as the

Commission, in the Second Rehearing Order, recognized might happen, *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh’g at 16, the presence of Macon County Conservation District (MCCD) land along the approved route on Highway 51 has prevented ATXI from acquiring transmission easements on a short portion of the approved route.

But ATXI must construct the Pana to Mt. Zion segment, and do so by 2016. Thus, the Commission is faced with two questions—what to do about the route modification needed to avoid the MCCD property, and whether to grant ATXI eminent domain authority for the parcels where negotiations have not been successful. These questions can be taken separately, although both can be answered in this proceeding to the extent necessary: the modification to the route needed to avoid the MCCD property is limited in its geographic scope, does not affect the Unsigned Properties, and will not materially change the Pana to Mt. Zion approved route. So, the question of whether ATXI has engaged in reasonable attempts to acquire the Unsigned Properties is separate from, and not affected by, the MCCD route issue.

Regarding the first question, ATXI has, as the Commission directed, worked to address the MCCD “obstacle.” MCCD will not grant an easement. But they would accept a slight route modification that avoids their land—one that is substantially similar to what ATXI proposed in its Brief on Exceptions on Rehearing in Docket 12-0598. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Reh’g, Brief on Exceptions at 1-4 (Jan. 29, 2014). This modification is limited in scope, and would affect only two landowners who were not already affected by the Commission-approved route. ATXI has reached an agreement with one and is negotiating with the other. (ATXI Ex. 4.0, p. 6; Tr. \_\_\_\_.) And the route modification does not materially alter the approved Pana to Mt. Zion route (in fact, it causes that route to affect fewer landowners).

The Commission has several options: (1) make an express finding that, given MCCD’s

position and ATXI's efforts to seek voluntary easements from affected landowners, ATXI is complying with the Second Order on Rehearing's requirement that it work to address the MCCD obstacle and that no amendment to ATXI's Certificate or Section 8-503 order is needed; (2) in its order in this proceeding, amend ATXI's Certificate and Section 8-503 order as it relates to the Pana to Mt. Zion segment to approve and authorize the modification of the route around the MCCD property (shown on Appendix C hereto<sup>1</sup>); or (3) adopt the approach set forth in the proposed order in Docket 14-0522 (Macon County), which would grant ATXI eminent domain authority for the Unsigned Properties but require ATXI to seek approval for a route modification around the MCCD land. ATXI recommends the third option.

Regarding the second question, a grant of eminent domain authority over the Unsigned Properties remains appropriate regardless of the Commission's determination regarding the route across the MCCD land. ATXI now seeks eminent domain authority for seven properties, owned by six Primary Landowners,<sup>2</sup> four of whom own property along the route between Pana and Mt. Zion in Shelby County, and two of whom own property along the route between Pana and Mt. Zion in Macon County (collectively, the Unsigned Properties). None of the Unsigned Properties are affected by the MCCD modification. And for these remaining Unsigned Properties, the grant of eminent domain authority is unopposed.

Section 8-509 of the Public Utilities Act (Act) authorizes the Commission to grant public

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<sup>1</sup> This map is the same as originally filed as ATXI Ex. 1.1 in Docket 14-0522.

<sup>2</sup> ATXI initially requested eminent domain with respect to eleven parcels, owned by ten Primary Landowners, but as of the date ATXI filed rebuttal testimony in this case, ATXI had successfully negotiated an easement with two landowners: the Revocable Trust No. 020721 (A\_ILRP\_PZ\_SH\_232\_ROW), and Mr. Alan E. and Mrs. Anna L. Sparling (A\_ILRP\_PZ\_SH\_215\_ROW). Since that time, ATXI has successfully negotiated an easement with a third landowner, Ms. Ruby E. Porter (A\_ILRP\_PZ\_SH\_241\_ROW.) For the reasons set forth in Section XX *infra*, ATXI has also withdrawn its request for eminent domain authority with respect to property owned by Dr. Terry Traster (A\_ILRP\_PZ\_SH\_207). (See also ATXI's Notice of Withdrawal Without Prejudice (Oct. 6, 2014). Maps depicting the location and layout of each of the remaining Unsigned Properties are attached as Appendix A. Legal descriptions and sketches of each easement across the remaining Unsigned Properties are attached as Appendix B.

utilities like ATXI eminent domain authority to condemn, in circuit court, the property rights it needs to carry out construction of projects authorized by the Commission. 220 ILCS 5/8-509. Before granting eminent domain authority, the Commission requires a utility to show that it has made reasonable attempts to acquire the land rights. The evidence amply demonstrates that ATXI has made reasonable attempts to acquire the Unsigned Properties by negotiation. ATXI contacted the owners of the Unsigned Properties no less than 13 times—in person and by phone, mail, and email—to negotiate easement acquisition. (*See* ATXI Ex. 2.1.) ATXI offered the landowners generous compensation for the easement rights it needs, and has worked to address their concerns. ATXI's offers were based on a consistent methodology that takes into account extensive market and appraisal data, and the offers often approach 100% of the fee value of the easement area in exchange for only easement rights. ATXI also addressed the landowners' concerns related to the easements ATXI needs, and where feasible, it accommodated those concerns.

Despite ATXI's reasonable attempts to negotiate, the owners of the Unsigned Properties will not sell ATXI the land rights it needs to construct the Illinois Rivers Project. Accordingly, ATXI needs eminent domain authority to acquire the easements and, in turn, construct the Project, thereby bringing the Project's benefits to Ameren Illinois-area energy consumers without delay.

**A. ATXI requests limited easement rights in the Unsigned Properties.**

ATXI needs to acquire 150-foot wide permanent transmission line easements across the Unsigned Properties. (ATXI Exs. 1.0, p. 6; 3.0, p. 6.) A 150-foot wide right-of-way is generally the minimum necessary to construct and safely maintain the Project's 345 kV transmission line. (*Id.*) That width will provide adequate National Electric Safety Code clearances from the conductor to any buildings, trees, or vegetation on the edge of the right-of-way. (ATXI Ex. 3.0,

p. 6; *see also* NESC Rule 234C.1.) In some cases, ATXI also may need construction easements or access rights (for ingress and egress and vegetation management), depending on the layout of the landowner's property and the location of the transmission line. (ATXI Exs. 1.0, p. 6; 3.0, pp. 6-7.) Construction easements are necessary if, during installation of the wires, the construction contractor needs to set up equipment outside the transmission line right-of-way. Construction easements, where necessary, could be up to 150 feet in width, in addition to the transmission line easement area. (*Id.*) Access rights are necessary if, in order to operate and maintain the line after it is constructed, ATXI must cross a landowner's property to reach the easement area or to maintain vegetation adjacent to it.

**B. ATXI's request is uncontested for the Unsigned Properties.**

No party presented evidence contesting ATXI's need for eminent domain authority related to any of the Unsigned Properties over which ATXI currently seeks authority:

1	A_ILRP_PZ_SH_213_ROW	1001-32-00-300-005	Land Trust Agreement No. 725
2	A_ILRP_PZ_SH_226_ROW, A_ILRP_PZ_SH_228_ROW	1001-29-00-400-008, 1001-29-00-400-010, 1001-29-00-400-009	Richard D. Fulk
3	A_ILRP_PZ_SH_236_ROW	1001-20-00-300-002	Sequoia Farm Foundation
4	A_ILRP_PZ_SH_238_ROW	1001-20-00-300-013	Jon and Carolyn F. Odell
5	A_ILRP_PZ_MA_429_ROW	16-20-03-100-001	David Renton
6	A_ILRP_PZ_MA_449_ROW	16-16-36-400-001, 11-17-31-300-002	Charles T. Moore Trust

**C. Staff agrees that ATXI has made reasonable attempts to acquire the Unsigned Properties.**

Staff agrees that "ATXI's efforts to negotiate for easements across the specific parcels identified in the petition [are] reasonable," in satisfaction of the statutory requirements for a

grant of eminent domain authority. (ICC Staff Ex. 1.0, p. 6.) Accordingly, Staff and ATXI agree that ATXI has satisfied the “reasonable attempts” requirements of Section 8-509.

## **II. Impact of Route Deviation near Macon County Conservation District**

Staff witness Mr. Rockrohr has expressed concern that the MCCD route modification “was not included in the CPCN and order pursuant to Section 8-503 of the Act that the Commission granted to ATXI in Docket No. 12-0598.” (ICC Staff Ex. 1.0, pp. 14-15.) Mr. Rockrohr recommends that, if it has not already done so at the time it issues the final order in this proceeding, the Commission either: (i) grant ATXI’s request for eminent domain and simultaneously amend the Certificate and Section 8-503 order issued in Docket 12-0598 to include the modification that bypasses the MCCD parcels; or (ii) withhold granting eminent domain authority to ATXI for any parcel on the Pana to Mt. Zion segment of the route until the Commission amends the Certificate and Section 8-503 order. (*See id* at 15.) As discussed below, there are at least two other options. One would be to expressly find that ATXI’s route modification and attempts to acquire the needed land rights voluntarily are consistent with the Commission’s directions to work to address the MCCD “obstacle,” such that no amended Certificate and Section 8-503 order are needed. Another would be to adopt the approach set forth in the proposed order in Docket 14-0522, which would grant ATXI eminent domain authority for the Unsigned Properties but require ATXI to seek approval for a route modification around the MCCD land. ATXI recommends that the order adopt the approach adopted by the Proposed Order in Docket 14-0522.

### **A. History of the Route Modification**

On Rehearing in Docket 12-0598, the Commission approved a route that no party had proposed or recommended; the approved route combined a portion of Intervenor Leon Corzine’s proposed route running north from Pana along Highway 51 with a portion of Staff’s proposed



route running east toward Mt. Zion. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh’g at 49-50.

During the rehearing, Macon County Conservation District (MCCD) filed testimony and briefs identifying its properties along what would become the approved route, indicating that they may not be taken by eminent domain, and stating the MCCD did not wish to sell the property. *See Ameren Transmission Co. of Ill.*, Docket 12-0598, Reh’g, Direct Test. of Kathleen Merner & MCCD Exhibits 1-3; MCCD Reply Br., p. 1. In its Brief on Exceptions, ATXI clearly informed the Commission that the approved route crossed parcels owned by MCCD and that property owned by MCCD cannot be the subject of eminent domain proceedings. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Reh’g, Br. on Exceptions at 1-3 (Jan. 29, 2014). In its Brief on Exceptions, ATXI also presented a map that proposed a minor modification to the approved route that would avoid the parcels owned by MCCD. *Id.* The proposed modification was substantially similar to the MCCD route modification at issue here: where the approved route ran approximately one-half mile north, and then one mile east, the modification ATXI proposed ran one mile east and then one-half mile north. (*Compare* ATXI Ex. 4.1 *with* ATXI Ex. 4.0, p. 5.) The modification does not change the total length of the Pana to Mt. Zion Route, which remains approximately 32 miles long irrespective of whether the modification is used. (ATXI Exs. 4.0, p. 9; 6.0, p. 5.)

The Commission’s Second Order on Rehearing recognized that ATXI’s inability to condemn MCCD property might present an “obstacle,” but did not modify the route; instead the Commission directed ATXI to “work to address” the issue. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh’g at 49-50. Since the Order was issued, ATXI has engaged in discussion and negotiation with MCCD, but MCCD remains “unable and/or

unwilling to voluntarily grant an easement.” (ICC Staff Ex. 1.0, p. 10.) In an effort to comply with the Commission’s directive to “work to address this obstacle,” ATXI has entered into negotiations with the four landowners who own the land that would be affected by the MCCD route modification. (ATXI Ex. 4.0, p. 6.) The approved route already affected two of these landowners. ATXI has acquired an easement for two of the four parcels and is negotiating for the others. (*Id.*) Further, the modified route actually affects three fewer landowners than the approved route. (*Id.*)

**B. Regardless of whether the ICC amends ATXI’s Certificate and Section 8-503 order for the MCCD route modification, the ICC should grant eminent domain authority for the Unsigned Properties.**

None of the Unsigned Properties for which ATXI is seeking eminent domain authority in this case are affected by the modification avoiding MCCD’s property. Each of the Unsigned Properties lies along the Commission-approved route from Pana to Mt. Zion, and ATXI has made reasonable efforts to negotiate with each of the six Primary Landowners, in satisfaction of the Commission’s standards for a grant of eminent domain authority. Staff agrees that ATXI has “made reasonable attempts to negotiate for easements” across these parcels. (ICC Staff Ex. 1.0, p. 15.) As discussed further below, the record fully supports this conclusion. Thus, the Commission should grant eminent domain authority for the Unsigned Properties.

**C. The approach set forth in the Docket 14-0522 Proposed Order represents a reasonable resolution of the MCCD issue.**

ATXI cannot place the transmission line on MCCD property. (ICC Staff Ex. 1.0, p. 10.) But, it has identified a modified route that adds virtually no additional length to the Pana to Mt. Zion line segment. (ATXI Exs. 4.0, p. 9; 6.0, p. 5.) Even with the modification, the Highway 51 route remains the least cost of the routes reviewed by the Commission in Docket 12-0598. (*See* ATXI Ex. 6.0, pp. 3-4.) MCCD will accept the modified route and ATXI is seeking voluntary

easements along the modified route. (ATXI Ex. 4.0, p. 6.) No other aspects of the Pana to Mt. Zion route are materially changed by the modification. (*Id.* at 7.) Nevertheless, ATXI recognizes the concerns regarding the need to obtain Commission approval for the MCCD route modification expressed in the Docket 14-0522 Proposed Order. As that Proposed Order correctly recognized, however, the MCCD modification affects a very limited geographic area. *Ameren Transmission Co. of Ill.*, Docket 14-0552, Proposed Order at 9 (Sept. 30, 2014). As was the case with the eminent domain request in that case, ATXI is not seeking eminent domain authority in this proceeding for any property affected by ATXI's proposed modification around the MCCD land. Therefore, the Commission can and should adopt the approach set forth in the Proposed Order in Docket 14-0522 and grant ATXI eminent domain authority for the Unsigned Properties, but require ATXI to seek approval for the route modification in the vicinity of the MCCD properties.

**D. Reconsideration of the entire Pana to Mt. Zion route is unnecessary, inappropriate and will compromise the segment's in-service date.**

Given the limited scope of the MCCD route modification, Mr. Rockrohr's second alternative—denial of eminent domain authority until the Commission amends the CPCN and Section 8-503 order—is neither necessary nor appropriate. As discussed above, the modification occurs entirely within one-half of one square mile. (ATXI Exs. 4.0, p. 9; 6.0, p. 5.) The modification affects four landowners, two of whom are also affected by the unmodified route. (ATXI Ex. 4.0 at 6.) The modification does not materially change the characteristics of the Pana to Mt. Zion route; the route remains approximately 32 miles long, and remains the least expensive of the routes presented to the Commission in Docket 12-0598. (ATXI Ex. 6.0, pp. 3-6.) In particular, although the modification increases the cost of the Pana to Mt. Zion route by \$600,000, all else being equal, this is only an increase of approximately one (1) percent over the

estimate cost for the entire segment. (ATXI Ex. 6.0, p. 3.) The modification does not result in any material difference in real estate acquisition costs either. (ATXI Ex. 4.0, p. 7.) ATXI used the same methodology to determine the amount of its compensation offers for landowners along the modification as it used for its offers for all landowners located along the Pana to Mt. Zion segment. (ATXI Ex. 4.0, p. 7.) More importantly, the compensation ATXI has agreed to for two of the properties along the modification is comparable to the agreed upon compensation for other landowners elsewhere in the Project. (*Id.*) Thus, even as modified, the Pana to Mt. Zion route remains \$1.5 million less costly than the next cheaper alternative considered in the underlying case (the Blended Route). (*Id.* at 3-4.)

Moreover, ATXI has already incurred design and construction costs of \$315,000 and real estate acquisition costs of \$3,653,545 to prepare for construction of the Pana to Mt. Zion route. (ATXI Exs. 4.0, p. 10; 6.0, p. 4.) These costs would be lost if some other route were eventually approved—in short, they would be added to the cost considerations for any other route.

Furthermore, withholding eminent domain authority will risk delay of the in-service date for the Pana to Mt. Zion segment. In Docket 12-0598, the Commission recognized that the Decatur area faces risk of voltage collapse, and that the Pana to Mt. Zion segment should be in service by 2016 in order to appropriately address that risk. *Ameren Transmission Co. of Ill.*, Docket 12-0598, Second Order on Reh’g at 16. Any delay in the acquisition of property along the Pana to Mt. Zion route will complicate or jeopardize ATXI’s ability to meet the in-service date for this segment. (ATXI Ex. 6.0, p. 6.)

### **III. Statutory Authority and Standard of Review**

Section 8-509 of the Act permits a public utility to take, by eminent domain, private property necessary for the construction of utility facilities. 220 ILCS 5/8-509. A utility seeking to take private property by eminent domain pursuant to Section 8-509 must obtain Commission

approval before exercising that authority in circuit court. *See Ill. Bell Tel. Co. v. Lewis*, 117 Ill. App. 3d 72, 75 (4th Dist. 1983).

In determining whether eminent domain is necessary, the Commission requires the utility to show that it has made a reasonable attempt to acquire the property rights it needs. *See, e.g., Ameren Ill. Co.*, Docket 13-0516, Order at 3 (Oct. 23, 2013) (citing *Ill. Power Co.*, Docket 06-0706, Order at 88 (Mar. 11, 2009)); *Ameren Ill. Co.*, Docket 13-0456, Order at 3 (Sept. 10, 2013); *Ameren Ill. Co.*, Docket 11-0469, Order at 3 (Dec. 13, 2011); *Ill. Power Co.*, Docket 10-0173, Order at 3 (Nov. 23, 2010); *Ill. Power Co.*, Dockets 08-0291/0449 (cons.), Order at 15 (June 9, 2009) (citing *Cent. Ill. Pub. Serv. Co.*, Docket 07-0532, Order at 14 (May 6, 2009)). The Commission evaluates whether a utility has made reasonable efforts to negotiate for the property rights it needs by considering five factors:

(1) the number and extent of contacts with the landowners, (2) whether the utility has explained its offer of compensation, (3) whether the offers of compensation are comparable to offers made to similarly situated landowners, (4) whether the utility has made an effort to address landowner concerns, and (5) whether further negotiations will likely prove fruitful.

*See* ICC Staff Ex. 1.0, pp. 6-9; *see also Ameren Ill. Co.*, Docket 13-0456, Order at 3; *Ameren Ill. Co.*, Docket 13-0516, Order at 3; *Ameren Ill. Co.*, Docket 11-0469, Order at 3; *Ill. Power Co.*, Docket 10-0173, Order at 14-16; *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order at 13 (July 17, 1996); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, Order at 24 (Oct. 3, 1990); *Mount Carmel Pub. Util. Co.*, Docket 91-0113, Order at 6 (May 16, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0206, Order (Jan. 9, 1991); *Cent. Ill. Pub. Serv. Co.*, Docket 90-0427, Order (Apr. 3, 1991).

Although the Commission considers the reasonableness of utilities' efforts to make offers of compensation, it is well established that whether an offer is just compensation for an easement lies within the jurisdiction of the circuit court, not the Commission. *See, e.g., Rich v. City of*

*Chicago*, 59 Ill. 286, 294 (1871) (finding “the act of ascertaining the value is . . . judicial in its nature” and the judicial department is the proper entity to determine the question of just compensation); *Forest Preserve Dist. v. West Suburban Bank*, 161 Ill. 2d 448, 457 (1994) (“The very purpose of an eminent domain proceeding [in state court] is to determine the amount of just compensation constitutionally owed to the landowner.”) (citing *Ill. Cities Water Co. v. City of Mt. Vernon*, 11 Ill. 2d 547, 551 (1957)). Accordingly, the Commission will not consider valuation of the property rights sought in a Section 8-509 proceeding. Ill. Adm. Code § 300 Appendix A (“The Commission also does not establish or approve the negotiated price and other terms for the acquisition of land or land rights.”); *see also*, *Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at \*24-25 (Oct. 3, 1990) (“The Commission notes that it does not have the authority to establish the price to be paid to landowners for right-of-way. That issue is to be decided by the courts.”). As the Commission explained in Docket 10-0173, “the Commission does not intend to make any pronouncements regarding the actual value of any parcel sought in an eminent domain proceeding.” *Ill. Power Co.*, Docket 10-0173, Order at 16. And the Commission reaffirmed this principle in a recent eminent domain proceeding, stating, “[t]o the extent that there are any flaws in the appraisals, including any failure to reflect a diminution in the value of the property outside of the easement area, such concerns are within the purview of a circuit court, not the Commission.” *Ameren Transmission Co. of Ill.*, Docket 14-0291, Order at 18 (May 20, 2014). So while the Commission will evaluate whether the utility made comparable offers to landowners with similar circumstances and explained the basis for its compensation offered, it does not make any determination about the *amount* of those offers. *Id.*; *Ill. Power Co.*, Docket 10-0173, Order at 16; *see also* *Cent. Ill. Pub. Serv. Co.*, Docket 90-0022, 1990 Ill. PUC LEXIS 504, Order at \*24-25.

### **A. Contact with Landowners**

ATXI began contacting the owners of Unsigned Properties in Shelby County, Illinois in April 2014, following the Second Order on Rehearing in Docket 12-0598 authorizing construction of the Pana to Mt. Zion segment of the Project. (ATXI Ex. 1.0, p. 6.) On April 1, 2014, ATXI sent by certified mail, return receipt requested, to the persons identified as the current owners of the Unsigned Properties in the records of the pertinent county Tax Collectors, a letter and “Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights of Way by Illinois Utilities” consistent with 83 Illinois Administrative Code Part 300. (*Id.* at 6-7.)

Two weeks after those mailings, beginning on April 15, 2014, ATXI began contacting the owners of the Unsigned Properties directly. (*Id.* at 7.) ATXI, through its professional land agents, contacted landowners, in person if possible, to discuss the purpose of the Project and the reason for the contact. (*Id.* at 7-8; ATXI Ex. 2.0, p. 6.) At this time, ATXI also provided landowners with a written statement of the Project’s purpose, a small-scale map, and a property-specific option exhibit (sketch), as well as information regarding the type and location of the proposed facilities. (ATXI Exs. 1.0, pp. 7-8; 2.0, p. 6; *see e.g.* ATXI Ex. 2.3 (Part D), p. 3 (signed agent checklist verifying agent discussed and provided landowner certain information, including the approximate location of poles); *see also* ATXI Ex. 1.2 (Rev.) (sample landowner packet).)

ATXI also offered the owners of the Unsigned Properties compensation for the easements it needs to acquire to construct the Project. (ATXI Exs. 1.0, pp. 7-8; 2.0, pp. 6-7.) The offers were based on an independent third-party appraiser’s determination of the market value of each property. (ATXI Exs. 1.0, pp. 9-12; 2.0, p. 6.) ATXI explained this to each landowner, and provided each with a property calculation worksheet, based upon the appraisers’ opinion and

including compensation for other items such as crop damage, where applicable. (ATXI Exs. 1.0, pp. 9; 2.0, p. 7.) ATXI also provided to each landowner an appraisal of his or her property. (ATXI Ex. 2.0, pp. 6-7.) Additionally, ATXI explained to the landowners the dimensions of the easement it sought and the proposed easement agreement document. (ATXI Ex. 1.0, p. 8.) Finally, ATXI ensured its representatives were available for discussion and negotiations as required and/or requested by each landowner. (ATXI Exs. 1.0, p. 8; 2.0, pp. 6-10; *see also* ATXI Ex. 1.3 (sample “check list” of items to be addressed by ATXI’s professional land agents during their first meeting with landowners).)

Thereafter, ATXI contacted or attempted to contact—by letter, email, phone, or in person—each owner of the Unsigned Properties no less than thirteen times. (ATXI Ex. 2.1.) The record confirms the extent of the negotiations with the Unsigned Properties. (ATXI Exs. 1.0, p. 8; 2.1 (contact log providing number and type of contact for each Unsigned Property); 2.3 (describing ATXI’s discussions and negotiations with each landowner); 2.2 (Rev.) (Confidential-Contains Terms of Negotiations) (detailing offers and counteroffers made).)

These efforts to contact landowners are similar to those the Commission consistently finds reasonable. *See, e.g., Ameren Transmission Co. of Ill.*, Docket 14-0291, Order (granting utility eminent domain authority where it contacted landowners at least seven times); *Ameren Ill. Co.*, Docket 13-0456, Order (Sep. 10, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 13-0516, Order (Oct. 23, 2013) (granting utility eminent domain authority where it contacted landowners at least 15 times); *Ameren Ill. Co.*, Docket 11-0469, Order (Dec. 13, 2011) (granting utility eminent domain authority where it contacted landowners at least 11 times).

## **B. Explanation of Compensation Offer**

The record reflects that ATXI has explained, in detail, the basis for its offers of



compensation to each owner of the Unsigned Properties. ATXI provided each landowner and/or their attorney with a detailed calculation sheet stating the easement acreage, the percentage of total market value of a fee simple interest in their land at which ATXI believed the easement should be valued, and ATXI's compensation offer itself. (ATXI Exs. 1.2 (Rev.), p. 7 (sample calculation sheet); 2.0, p. 6.) ATXI also explained to the landowners that its initial offer was based on an independent, third-party appraiser's determination of the market value of their property. (*Id.*)

In addition, ATXI explained how it plans to address any construction damages to property. Specifically, ATXI told landowners that it is responsible for the restoration of, or payment of damages for, their property, and that it would notify each landowner before construction commenced. (ATXI Ex. 1.0, p. 9.) For agricultural property, ATXI offered the landowners the option to receive prepaid damages for anticipated crop loss, on a graduated basis, spread over a five-year period. (*Id.*) ATXI also offered prepayment for anticipated general property damages, such as compaction and deep ripping, and restoration activities, such as fertilizing, rutting and reseeding. (*Id.*) If a landowner did not accept prepayment, ATXI explained that it would assess their property individually for damage at the end of the construction phase, and provide compensation at that time. (*Id.*) Finally, ATXI explained, it would assign an ATXI representative to be available to each landowner for the purpose of reporting any construction damage. (*Id.*)

### **C. Reasonableness of Compensation Offers**

ATXI intends to fairly compensate landowners for the impact of the Project on their property so that, after the Project is constructed, there is no impact to the property that results in a diminution in value beyond that reflected in the compensation that ATXI paid. (ATXI Ex. 1.0, p. 10.) Therefore, ATXI offered compensation intended to make landowners whole by fully

compensating for any impact on the market value of their property caused by imposition of the easement and the presence of the transmission line. (*Id.*)

**i. ATXI's initial compensation offers exceeded the appraised market value impact of the easement it needs to construct the Project.**

ATXI is only seeking easements across the Unsigned Properties. ATXI is not seeking to acquire the land in fee. Within the easement area, the landowners will retain all remaining property rights apart from ATXI's easement rights. (ATXI Ex. 1.0, p. 12.) Nevertheless, ATXI initially offered all of the Unsigned Properties' landowners 90% of the fee value of the easement area. (*Id.* at 11.) When combined with a signing bonus, ATXI's initial offers amounted to the full fee value of the easement acreage. (*See id.*) And these offers were in addition to any damages related to crops or construction, as outlined above.

**ii. ATXI's compensation offers are based on a consistent methodology for all landowners.**

ATXI developed its offers of compensation based on a methodology designed to produce comparable offers for similarly situated landowners. (*See* ICC Staff Ex. 1.0, pp. 7-8; ATXI Ex. 4.0, p. 7.) ATXI retained the appraisal firm American Appraisal Associates, Inc., a national appraisal firm that specializes in large infrastructure projects, to prepare an appraisal report for each property over which ATXI needs easement rights. (ATXI Ex. 1.0, p. 11.) ATXI applied the same methodology to each property. The appraisals determined the total market value of each property, if purchased in fee, based on the current highest and best use of the property. (*Id.*) This determination took into account "the price which a willing buyer would pay in cash and a willing seller would accept." (ATXI Ex. 1.4, p. 6.) These factors include, but are not limited to the following: (1) "the size, shape, zoning and available utilities of the subject property in relation to adjoining properties"; (2) "the location of the proposed easement and transmission line structures"; and (3) "recent land value trends." (ATXI Ex. 1.4.)

The appraisers then determined the effect on the market value of the property caused by imposition of the transmission line easement, including whether any property outside of the easement strip would suffer diminution in value. (ATXI Ex. 1.0, p. 11.) From this the value of the easement was derived, as the difference between the market value of the property with and without the easement. Typically, this value was 30% to 40% of the fee value of the easement acreage. (*Id.*) In an effort to negotiate in good faith, ATXI offered each landowner 90% of the fee value of the easement area, in addition to a 10% signing bonus. (*Id.*)

ATXI's initial offers also included compensation for other factors: crop damages equal to three years of crop loss for the entire easement area (to be paid on a graduated basis over five years), plus any additional non-crop land damages. (*Id.*) ATXI's compensation offers also considered drainage tile damage. (*Id.* at 10-11.) In fact, ATXI and the Illinois Department of Agriculture have agreed on a method for identifying and repairing damaged tile, and, on November 8, 2012, entered into an Agricultural Impact Mitigation Agreement (AIMA) reflecting their agreement related to drainage tile as well as a broad range of agricultural concerns. (*Id.*)

ATXI used the same methodology to determine the appropriate compensation for each easement it needs, and it considered future damages as well as characteristics unique to each of the Unsigned Properties. By using this same methodology for all landowners, ATXI's initial offers are reasonable and comparable. (*See* ICC Staff Ex. 1.0, pp. 7-8.)

**iii. ATXI's methodology is similar to those approved by the Commission in the past.**

The offers made to the owners of the Unsigned Properties were developed using a methodology virtually identical to the one used to develop offers to landowners on the River to Quincy, Meredosia to Ipava, and Sidney to Rising segments of the Project. In those cases, the Commission found that ATXI has made reasonable offers and efforts to negotiate with

landowners. *Ameren Transmission Co. of Ill.*, Docket 14-0291, Order at 18-20 (May 20, 2014); *Ameren Transmission Co. of Ill.*, Docket 14-0380, Order at 17-18 (June 26, 2014); *Ameren Transmission Co. of Ill.*, Docket 14-0438, Order at 10 (Aug. 5, 2014). This is also consistent with the Commission's practice of granting eminent domain authority to other utilities using the same or a similar methodology to determine offers to acquire land rights for electric transmission lines. *See, e.g., Ameren Ill. Co.*, Docket 13-0456, Order (granting eminent domain authority after utility made initial offers of 75% of appraised fee value); *Ameren Ill. Co.*, Docket 13-0516, Order (same); *Ameren Ill. Co.*, Docket 11-0469, Order (granting eminent domain authority after utility made initial offers of 50-75% of appraised fee value); *Ill. Power Co.*, Docket 10-0173, Order (same). ATXI's offer of a substantial portion of the full market value of the land, despite that the landowners retained all other rights incident to the land, is also consistent with prior approved methodologies. *See generally, Ill. Power Co.*, Dockets 08-0291/0449 (cons.), Order (granting utility eminent domain authority where its initial compensation offers were at least 75% of fee value).

**iv. ATXI revised compensation offers to reasonably accommodate landowner concerns.**

Despite ATXI's compensation offers of the full fee value of the easement, ATXI has not reached agreement with the owners of the Unsigned Properties. In most cases, the Unsigned Properties' landowners considered ATXI's offer too low, citing alleged damage to the remainder of the property as the basis for their refusal. (ATXI Ex. 1.0, p. 13.) ATXI made efforts to address landowners' concerns when it was able to do so. (ICC Staff Ex. 1.0, p. 8.) ATXI encouraged all landowners to provide their own current appraisal for their property. (ATXI Ex. 1.0, p. 14; ICC Staff Ex. 1.0, p. 8.) In some instances, ATXI increased its initial compensation offer to reflect additional valuation information that the landowners provided ATXI or additional

sales of comparable property in the area. (ATXI Exs. 1.0, p. 14; 2.2 (Confidential).)

Like ATXI's initial compensation offers, and for the same reason, the revised offers were reasonable. The resultant 100% (90% of fee simple value plus the 10% signing bonus) of fee value of the easement property that ATXI initially offered is fair compensation for the easement rights it sought. Accordingly, any higher offers are similarly fair. (ATXI Ex. 1.0, p. 15.)

#### **D. Responsiveness to Landowners' Concerns**

Throughout the negotiation process, ATXI addressed landowners' concerns unrelated to compensation. Some of those concerns related to specific changes landowners proposed to the language of the easement document, while others relate to the location of the transmission line or the poles. (ATXI Ex. 1.0, pp. 15-16; 2.3 (Part B) (Rev.); (Part F).) ATXI considered each proposed change individually. Where it could incorporate the changes without compromising the easement rights it needs for the Project, ATXI agreed to revise the easement document. (ATXI Ex. 1.0, p. 15.) Some proposed changes to the document, however, would impose restrictions or otherwise unreasonably limit the usefulness or intent of the easement. (*Id.*; *see also* ATXI Ex. 2.3 (describing discussions)). ATXI could not accommodate those changes.

As ATXI Exhibit 2.3 shows, ATXI routinely negotiates changes to easement language to address landowner concerns. For example, ATXI has engaged in negotiation with representatives of Ms. Ruby Porter to incorporate terms of the AIMA into the easement agreement. (ATXI Ex. 2.3 (Part H).)

Other landowners expressed concerns regarding the routing of the line and requested that ATXI alter the proposed location of the transmission line structures. (ATXI Ex. 1.0, pp. 15-16.) ATXI was willing to accommodate those requests provided they did not compromise ATXI's design standards for reliability or the integrity of the line, and otherwise are consistent with applicable regulatory approvals and requirements. (*Id.*; *see also* ATXI Ex. 2.3 (describing

discussions); ICC Staff Ex. 1.0, pp. 8-9 (noting ATXI's efforts to resolve landowner concerns about pole placement).)

As ATXI Exhibit 2.3 shows, ATXI routinely considered proposals to change pole locations to address landowner concerns. For example, ATXI negotiated with representatives of the Land Trust Agreement No. 725 to place the poles across the road from the Trust's property. (ATXI Ex. 2.3 (Part B) (Rev.)).) However, the pole relocation raised a number of engineering and related concerns, which prevented ATXI from accommodating the request. (ICC Staff Ex. 1.0, p. 9.)

Finally, one landowner (over whom ATXI no longer seeks authority in this docket) raised concerns regarding trees located on his property. Initially, Dr. Terry Traster asked whether a stand of trees that would be impacted by the line could be relocated. (ATXI Ex. 2.3 (Part A).) When Dr. Traster first raised this concern in May 2014, ATXI asked him to provide an estimate for transplantation costs. (*Id.*) Several months later, in late July, Dr. Traster informed the land agent that transplantation would not be possible, and asked to be compensated for the trees instead (\$2,000 per tree). (*Id.*) Dr. Traster's estimated value of each tree would result in a damages claim in excess of nine times ATXI's current offer for the easement on his property, and almost two and a half times the appraised value of *the entire property*. (*Compare* ATXI Ex. 2.2 (Rev.) *with* Traster Ex. 1.01 (Confidential – Contains Terms of Negotiations).) Thus, although ATXI originally understood the issue to be unrelated to compensation, it evolved into a matter of compensation. (*See* ATXI Cross Ex. 1, at 3.) ATXI thus asked for documentation supporting Dr. Traster's damages claim. (*Id.*) ATXI received the requested documentation approximately two months later, on September 21, 2014, the day before Dr. Traster intervened in this proceeding. (ATXI Ex. 5.0, p. 3.)

The documentation Dr. Traster provided to ATXI raised several questions. As a matter of due diligence, Ms. Sloan attempted to contact the arborist who compiled the estimate several times to seek clarity on these questions, but to no avail. (Tr. \_\_\_\_.)

At the conclusion of the evidentiary hearing held on October 3, 2014, the ALJ suggested the parties resume negotiations before the deadline for initial briefs—two business days later. ATXI does not believe there is sufficient time to have meaningful, additional discussion with Dr. Traster in this timeframe. Regardless, in the spirit of continuing, good faith negotiation, ATXI has withdrawn its request for eminent domain authority over Dr. Traster's property, without prejudice. *See* ATXI's Notice of Withdrawal Without Prejudice (Oct. 6, 2014).

Thus, the record reflects ATXI's extensive and substantial efforts to understand and accommodate landowners' concerns.

#### **E. Usefulness of Further Negotiations**

ATXI has made reasonable attempts to acquire the Unsigned Properties over many months, and will continue to pursue negotiated resolutions. But further negotiations are not expected to be successful. What is ultimately critical in granting relief under Section 8-509 is not whether continued negotiations might be beneficial, but whether ATXI has engaged in reasonable and good faith negotiations in its efforts to acquire the necessary land rights. The evidence quite clearly supports the granting of Section 8-509 eminent domain authority, even though negotiations have not been successful with the Unsigned Property owners. Therefore, a grant of eminent domain authority is appropriate. *See, e.g., Commonwealth Edison Co.*, Docket 05-0188, Order at 7 (Feb. 23, 2006) (granting utility eminent domain authority where it had attempted to acquire the necessary property by voluntary or reasonable terms, but had not been successful in doing so); *Cent. Ill. Pub. Serv. Co.*, Docket 95-0484, Order, 1996 Ill. PUC LEXIS 368 \*\*11-13 (July 17, 1996) (granting utility eminent domain authority where it had numerous

telephonic and face to face contacts with landowners, had independent appraisals of the property interests made and made reasonable offers based on those appraisals, to no avail).

That ATXI is willing to continue to negotiate is not a basis for denying Section 8-509 authority. ATXI cannot now be assured of acquiring rights-of-way in the Unsigned Properties by negotiation in time to meet the construction schedule for the Pana to Mt. Zion segment of the Project. So, eminent domain authority is needed now. Again, for over five months, since April 2014, ATXI has contacted the landowners of the Unsigned Properties many times, and it has offered reasonable and fair compensation for limited easement rights in their property. (*See supra* Section III.) Despite these reasonable attempts, no settlements have been reached for the Unsigned Properties. But the Illinois Rivers Project, and specifically the Pana to Mt. Zion segment of the Project, cannot wait forever for resolution. As explained, ATXI must adhere to the construction schedule for this segment. (*See supra* Section I.)

Notably, if the Commission grants ATXI eminent domain authority here, ATXI next will be required to seek an order authorizing condemnation from the circuit court before it can proceed with construction on the Unsigned Properties. (ATXI Ex. 1.0, pp. 16-17.) Absent settlement, that process can take up to a year, and this time frame must be considered in relation to the in-service dates of the segments at issue. (*Id.*) The fact that reasonable negotiations have not been successful to date, and the possibility of eminent domain proceedings taking a year, mean ATXI must proceed to eminent domain now.

#### **IV. CONCLUSION**

The evidence demonstrates that ATXI has made reasonable attempts to acquire the necessary property rights to the Unsigned Properties through good faith negotiations. Despite this, however, it is unlikely that ATXI will be able to obtain property rights for the Unsigned Properties through negotiation. ATXI must obtain eminent domain authority for permanent



easements, and where necessary, construction easements and access rights, across the Unsigned Properties to acquire the rights. ATXI therefore respectfully requests that the Commission authorize Petitioner's use of eminent domain to acquire all necessary land rights for construction of the Illinois Rivers Project, including permanent easements, temporary construction easements, and access rights for ingress, egress and vegetation management, across the Unsigned Properties as identified and shown on Appendix A and legally described in Appendix B, pursuant to Section 8-509 of the Act, and such further relief as deemed equitable and just.

Regarding the MCCD route, ATXI requests the Commission adopt the approach set forth in the proposed order in Docket 14-0522 (Macon County), which would grant ATXI eminent domain authority for the Unsigned Properties but require ATXI to seek approval for a route modification around the MCCD land.

Dated: October 7, 2014

Respectfully submitted,

AMEREN TRANSMISSION COMPANY OF  
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**CERTIFICATE OF SERVICE**

I, Albert D. Sturtevant, an attorney, certify that on October 7, 2014, I caused a copy of the foregoing *Initial Brief of Ameren Transmission Company of Illinois* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 14-0551.

/s/ Albert D. Sturtevant

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